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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE

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Secretary of Natural Resources

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David K. Paylor
Director

Michael D. Overstreet
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT

ISSUED TO

Austinville Limestone Co., Inc.
Registration No. 10213

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1301, 1307, 1309, 1316 and 10.1 – 1184, between the State Air Pollution Control Board and Austinville Limestone Co., Inc. for the purpose of resolving certain violations of State Air Pollution Control Board Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "Company" means Austinville Limestone Co., Inc., 223 Newton Church Rd, Austinville, VA 24312, Wythe County.

SECTION C: Findings of Facts and Conclusions of Law

1. On May 26, 2006, Jerry Wilson, Environmental Inspector, Sr., of the Virginia Department of Environmental Quality – SWRO, conducted an air compliance inspection and subsequent file review indicating that the installation of three (3) NSPS Subpart OOO applicable conveyor belts had been installed on February 23, 2006 without a required air permit modification. A Warning Letter was issued to Austinville Limestone Co., Inc. on July 7, 2006, requiring them to obtain a permit modification and to perform VEE's within 60 days of maximum production, but no later than August 21, 2006. The following deficiency was documented:
 - a. Permit condition No. 18 of Austinville Limestone's August 29, 2005 permit states, "Except where this permit is more restrictive than the applicable requirement, the NSPS equipment as described in Condition 2 shall be operated in compliance with the requirements of 40 CFR 60, Subpart OOO." (9 VAC 5-50-410) Source did not perform required Method 9 or alternative methods where applicable on or before August 21, 2006 as required by the NSPS subpart OOO and the July 7, 2006 Warning Letter issued by DEQ.
2. On December 21, 2006, DEQ sent a Notice of Violation Letter (NOV No. 12-12-SWRO - 2006) by Certified Mail-Return Receipt Requested, to Austinville Limestone Co., Inc., informing the Company that DEQ had reason to believe that the violations referenced in Section C. 1. had occurred.
3. The following regulations may be applicable in part or whole to the above listed permit deficiencies : 9 VAC 5-170-160.A – (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part: "The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits".

9 VAC 5-50-410	Emission Standards: Designated standards of performance.
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4. On January 4, 2007, DEQ received facsimile VEE report from Austinville Limestone Co., Inc., demonstrating that the required VEEs (Method 9 – discharge conveyor) had been performed on December 14, 2006. On January 8, 2007, DEQ received facsimile Method 22 test results demonstrating that the required Method 22 (2 conveyors within building) had been performed on January 8, 2007.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code §§ 10.1 – 1309 and 10.1-1316 and upon consideration of Va. Code § 10.1 – 1186.2, the Board orders Austinville Limestone Co., Inc. and Austinville Limestone Co., Inc. voluntarily agrees, to a civil charge of \$4,890.34 in settlement of the violations cited in this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The payment shall include Austinville Limestone Co., Inc.'s Federal ID number and shall identify that

payment is being made as a result of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Austinville Limestone Co., Inc. for good cause shown by the Company, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the Company's Stationary Source Permit to Construct and Operate dated 8-29-05 and superseded 11-1-06.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of Austinville Limestone Co., Inc. as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. By entering into this Order, Austinville Limestone Co., Inc. admits jurisdictional allegations, factual findings, or conclusions of law contained herein. For purposes of this Order and subsequent actions with respect to this Order, Austinville Limestone Co., Inc. agrees not to challenge the jurisdictional allegations, factual findings, and conclusions of law contained herein.
5. Austinville Limestone Co., Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. Austinville Limestone Co., Inc. declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 et seq., and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to enforce this Order.
7. Failure by Austinville Limestone Co., Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. Austinville Limestone Co., Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Austinville Limestone Co., Inc. must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Austinville Limestone Co., Inc. shall notify the Director, Southwest Regional Office of DEQ within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;

- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Company intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

- 10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
- 11. This Order shall become effective upon execution by both the Director or his designee and Austinville Limestone Co., Inc.. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 12. This Order shall continue in effect until the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to Austinville Limestone Co., Inc.. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Austinville Limestone Co., Inc. from its obligation imposed in this Order, shall not operate to relieve Austinville Limestone Co., Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable

13. By its signature below, Austinville Limestone Co., Inc. voluntarily agrees to the issuance of this Order.

And it is ORDERED this 25th day of January, 2007


Michael D. Overstreet, Regional Director
Department of Environmental Quality

Austinville Limestone Co., Inc. voluntarily agrees to the issuance of this Order.


Douglas Akers
President
Austinville Limestone Co., Inc.


John Michener
Vice - President
Austinville Limestone Co., Inc.


Kevin Mann
Vice - President
Austinville Limestone Co., Inc.


Jerry McArthur
Vice - President
Austinville Limestone Co., Inc.

Date: 1/23/07

Commonwealth of Virginia

City/County of Wythe

The foregoing document was signed and acknowledged before me this 23 day of January, 2007 by Douglas Akers, John Michener, Kevin Mann, Jerry McArthur on behalf of Austinville Limestone Co., Inc.

Date: 1-23-2007


Notary Public

My commission expires: 4-30-09